



BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
COMMISSIONER - CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER

DOCKETED

JUL 16 1998



IN THE MATTER OF THE APPLICATION OF
NATIONAL TELEPHONE &
COMMUNICATIONS, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
INTERLATA/INTRALATA RESOLD
TELECOMMUNICATIONS SERVICES EXCEPT
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-02813A-94-0353

DECISION NO. 61002

ORDER

Open Meeting
July 14 and 15, 1998
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 8, 1996, National Telephone & Communications, Inc. ("NTC" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold telecommunications service in the State of Arizona.

2. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") were public service corporations subject to the jurisdiction of the Commission.

3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101 through R14-2-1115 to regulate resellers.

4. NTC is a Nevada corporation which has been qualified to conduct business in Arizona since 1994.

NTC initially filed an application on October 6, 1994, and substituted the above application in the same docket.

1 5. NTC is a switchless reseller which purchases telecommunications services from WilTel.

2 6. On April 21, 1997, the Commission's Utilities Division Staff ("Staff") filed a Staff Report.

3 7 The Staff Report stated that NTC provided the audited financial statements of its parent
4 company, Incomnet, Inc., which indicated that it had net income of \$4 million for the year ended 1994,
5 and net income of \$1.4 million for the year ended 1995, and reported negative retained earnings of \$14.2
6 million and \$12.8 million, for 1994 and 1995, respectively. Staff stated that since these financial
7 statements indicate that Applicant did not generate enough revenue to cover its expenses, Staff has
8 concerns about Applicant's ability to incur operating losses in the future and to repay customer
9 prepayments, advances, and deposits. Accordingly, Staff recommended that pursuant to A.A.C. R14-2-
10 1105.D, Applicant maintain for a minimum of one year, an escrow account equal to the total amount of
11 any prepayments, advances and deposits that Applicant may collect from its customers as a condition of
12 certification. In the alternative, Applicant could file a letter stating that it does not currently charge
13 customers any prepayments, advances or deposits, and does not intend to do so in the future. If at some
14 future date Applicant desired to charge customers any prepayments, advances or deposits, it must file
15 information with Staff that demonstrates Applicant's financial viability. Staff would review the
16 information and provide Applicant its decision concerning financial viability within 30 days of receipt
17 of the information. Staff believes that if Applicant experiences financial difficulty, there should be
18 minimal impact to its customers. Customers are able to dial another reseller or facilities-based provider,
19 and may permanently switch to another company without forfeiting any prepayment, advance or deposit.

20 8. The Staff Report stated that Applicant has no market power and the reasonableness of its
21 rates would be evaluated in a market with numerous competitors.

22 9. Staff recommended that:

23 (a) Applicant's application for a Certificate should be approved subject to A.A.C.
24 R14-2-1106.B;

25 (b) Applicant's intrastate toll service offerings should be classified as competitive
pursuant to A.A.C. R14-2-1108;

26 (c) Applicant's competitive services should be priced at the effective rates set forth
27 in Applicant's tariffs and the maximum rates for these services should be the maximum
28 rates proposed by Applicant in its tariffs. The minimum rates for Applicant's competitive
services should be Applicant's long run incremental costs of providing those services as
set forth in A.A.C. R14-2-1109. Any future changes to the maximum rates in Applicant's

1 tariffs must comply with A.A.C. R14-2-1110;

2 (d) Applicant should be required to comply with the Commission's rules and modify
3 its tariffs to conform with these rules, if it is determined that there is a conflict between
4 Applicant's tariffs and the Commission's rules; and

5 (e) The application may be approved without a hearing.

6 10. By Procedural Order dated May 8, 1997, the Commission set a deadline of June 2, 1997
7 for filing exceptions to the Staff Report; requesting that a hearing be set; or requesting intervention as
8 interested parties.

9 11. No exceptions were filed to the Staff Report, nor did any party request that a hearing be
10 set, nor were any requests for intervention filed with Docket Control.

11 12. On November 17, 1997, Applicant filed an indemnity bond in lieu of placing an amount
12 in escrow equal to the prepayments it may collect from its customers.

13 **CONCLUSIONS OF LAW**

14 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona
15 Constitution and A.R.S. §§ 40-281 and 40-282.

16 2. The Commission has jurisdiction over Applicant and the subject matter of the application.

17 3. Notice of the application was given in accordance with the law.

18 4. The provision of competitive interLATA/intraLATA reseller services in Arizona by
19 Applicant is in the public interest.

20 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
21 interLATA/intraLATA reseller services in Arizona.

22 6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be adopted.

23 7. It is reasonable to permit Applicant to post an indemnity bond in lieu of establishing an
24 escrow account.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application of National Telephone & Communications,
27 Inc. for a Certificate of Convenience and Necessity for authority to provide competitive
28 interLATA/intraLATA resold telecommunications services except local exchange services shall be, and
the same is, hereby granted.

1 IT IS FURTHER ORDERED that if, after one year, National Telephone & Communications, Inc.
2 desires to terminate the performance bond, it shall file information with Staff that demonstrates its
3 financial viability. Staff shall review the information and provide National Telephone &
4 Communications, Inc. with a recommendation within thirty days of receipt of the information as to
5 whether National Telephone & Communications, Inc.'s financial viability indicates that a bond is no
6 longer necessary.

7 IT IS FURTHER ORDERED that National Telephone & Communications, Inc. shall comply with
8 the Staff recommendations set forth in Findings of Fact No. 9.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12 
13 COMMISSIONER - CHAIRMAN

14 
15 COMMISSIONER

16 
17 COMMISSIONER

18 IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona
19 Corporation Commission, have hereunto set my hand and caused the official seal
20 of the Commission to be affixed at the Capitol, in the City of Phoenix, this
21 16th day of July, 1998.

22 
23 JACK ROSE
24 EXECUTIVE SECRETARY

25 DISSENT
26 BMB:dap
27
28

1 SERVICE LIST FOR:

NATIONAL TELEPHONE & COMMUNICATIONS, INC.

2 DOCKET NO.:

T-02813A-94-0353

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